Testimony of Brenda Shipley

Submitted to the **Insurance and Real Estate** Committee
In reference to **Proposed S.B. No 446**
February 19, 2013

Good afternoon, Senator Crisco, Representative Megna, Senator Hartley, Representative Wright, and members of the Insurance and Real Estate Committee. Thank you for the opportunity to submit testimony before you today regarding An Act Concerning Health Insurance Coverage and Tort Reform.

As you contemplate reforming medical malpractice liability, I'd like to bring something to your attention that was missing from the 2005 legislation: discovery of knowingly concealed medical errors. At issue is the language added to the end of the statute that for all practical purposes nullifies the right to initiate a medical malpractice lawsuit if the patient does not, and cannot, discover the medical error within three years of the injury.

> Sec. 52-584. Limitation of action for injury to person or property caused by negligence, misconduct or malpractice. No action to recover damages for injury to the person, or to real or personal property, caused by negligence, or by reckless or wanton misconduct, or by malpractice of a physician, surgeon, dentist, podiatrist, chiropractor, hospital or sanatorium, shall be brought but within two years from the date when the injury is first sustained or discovered or in the exercise of reasonable care should have been discovered. ~~and except that no such action may be brought more than three years from the date of the act or omission complained of, except that a counterclaim may be interposed in any such action any time before the pleadings in such action are finally closed.~~

Revising the language to remove the added burden beyond simple discovery is a practical protection of patient rights that provides a clear starting point for taking action – the date of discovery. Period. At the same time, this language protects the medical community from unreasonable extensions to the statute of limitations.

While a statute of limitation of two years from the date of discovery of medical error is entirely reasonable to me, the additional burden in our state for a patient to have continued to see the doctor that harmed them within the recent three years of that discovery is not. Specifically, this is not practical for surgical errors. In my experience, the standard practice for surgeons is to quickly dispense with their patients within a few months of surgery, with post-operative referrals to other doctors for physical therapy, pain management, and continuing care. Secondly, a medical error hidden beneath stitches may not be knowable or discoverable until another surgery is performed, which may not be within three years of the first.

I've looked into what other states are doing and was surprised that I couldn't find any other state that had added language to the discovery rule that requires patients continue seeing their malpracticing doctor. Instead, other states simply state a number of years from discovery. Period. Or, make exceptions for medical errors that are knowingly concealed.

State	Statute of Limitations Medical Malpractice
CA	1 year from discovery.
CO	If malpractice knowingly concealed, 2 years from discovery.
MA	3 years from discovery.
MD	3 years from discovery.
ME	3 years from discovery.
MI	6 months from discovery.
MN	2 years from discovery.
NY	If malpractice knowingly concealed, 6 years from discovery.
OK	2 years from discovery.

PA	2 years from discovery.
RI	3 years from discovery.
TN	1 year from discovery.
TX	2 years from discovery, maximum to 10 years from injury.

In my case, a surgical error was hidden beneath stitches, and my post-surgical follow-up period with my surgeon was just a few months. At that point, my surgeon proclaimed my surgery a success, my issues were dismissed as par for the course for my medical condition, and I was referred for treatment to other doctors who, like me, had no idea that a surgical error beneath my stitches was the cause of my chronic, debilitating pain. Finally, a recent surgery performed by a different surgeon revealed the underlying medical error. By deflecting my issues to other doctors for years, my surgeon escaped culpability for his errors.

To the contrary, I was held completely responsible for the financial fallout of my surgeon's error. In addition to paying ever escalating insurance premiums, I incurred thousands of dollars in out of pocket costs for care that would not have been necessary had I not been harmed. My insurance company incurred thousands of dollars in claim costs that would not have been necessary had I not been harmed. Meanwhile, the health system in which the malpracticing surgeon worked continued to be paid for care that would not have been necessary had I not been harmed. Since this committee is looking at both health insurance costs and medical error, perhaps it can borrow from other insurance industry practices. If my injury had been the result of a workplace accident, for example, I would be required to indicate that on a form when I sought medical care. Why, then, is a medical accident not similarly reported and subject to subrogation? Is it fair that my insurance company and I are held financially liable for the negligent actions of others who are also covered by insurance but statutorily untouchable and worse yet, reap financial rewards as a direct outcome of their negligence? Perhaps in this way we can begin to measure the cost of medical errors on our state's economy.

I urge you to consider my story and these findings from other states as you determine how to protect your loved ones and your patient constituents, as well as our many good doctors -- from those that do harm, cover it up, and wait for the clock to stop ticking. I have always believed that the best way to reduce the cost of medical malpractice is by reducing the instance of medical malpractice.

If you have any questions concerning my testimony, please feel free to contact me at brendashipley@mac.com.